In the Supreme Court of the United States

OCTOBER TERM, 1951

No. 191

CLIFTON E. WELDON, PETITIONER

v.

INTERSTATE COMMERCE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF FOR THE RESPONDENT IN OPPOSITION

OPINION BELOW

The opinion of the district court (R. 19) is reported at 90 F. Supp. 873. No opinion was rendered by the court of appeals. The judgment of that court (R. 41) is reported at 188 F. 2d 367.

JURISDICTION

The judgment of the court of appeals was entered on April 9, 1951 (R. 41), and a petition for rehearing was denied on June 2, 1951 (R. 60). The

petition for a writ of certiorari was filed on July 17, 1951. The jurisdiction of this Court is invoked under 28 U.S.C. 1254.

QUESTION PRESENTED

Whether shelled raw peanuts may be transported under a motor carrier's certificate of convenience and necessity authorizing transportation of "agricultural products."

STATUTE INVOLVED

Pertinent provisions of Part II of the Interstate Commerce Act, 49 U.S.C. 301 *et seq.* are set forth in the Appendix, *infra,* pp. 8-11.

STATEMENT

The Interstate Commerce Commission brought this action in the United States District Court for the Western District of Tennessee to enjoin petitioner, a common carrier by motor vehicle, from transporting shelled raw peanuts in interstate commerce without having obtained a proper certificate of convenience and necessity therefor (R. 2-5). Petitioner's answer, admitting the transportation, contended (1) that the transportation was authorized by a certificate held by him covering the transportation of "agricultural products," and (2) that no certificate was needed because of Section 203(b)(6) of the Interstate Commerce Act, which exempts from the certificate requirement "motor vehicles used in carrying property consisting of * * * agricultural commodities (not

including manufactured products thereof) * * * " (R. 10-12).

The district court rejected these contentions and granted the Commission's motion for summary judgment (R. 31). It found that raw shelled peanuts are a manufactured product and therefore are not exempt under Section 203(b)(6), *supra*. And it construed the term "agricultural products" in petitioner's certificate as equivalent to the term "agricultural commodities (not including manufactured products thereof)" in the Act. Hence, it concluded that carriage of shelled peanuts was also beyond the authority of petitioner's certificate. (R. 30.) In reaching this conclusion the district court referred to the extensive processing undergone by the peanuts during shelling (R. 20-21), and cited the decision of the Commission in *Monark Egg Corporation Contract Carrier Application*, 44 M.C.C. 15, that shelled peanuts were a manufactured commodity (R. 24-25).

The court of appeals affirmed without opinion "upon the grounds and for the reasons set forth in the memorandum opinion of the district court * * *" (R. 41).[1]

ARGUMENT

1. The petition raises only the narrow question whether petitioner's certificate of convenience and

[1] Briefs *amicus curiae* supporting petitioner's claim of exemption were filed by the Secretary of Agriculture in the court of appeals. The Secretary contended that shelled raw peanuts were not manufactured commodities under the exemption provision of Section 203(b)(6).

necessity authorizes the transportation of shelled raw peanuts. Both the "Questions Presented" and the "Specifications of Errors to be Urged" are framed solely in terms of the scope of the authority granted by the certificate (Pet. 2, 5).

No question of statutory interpretation is involved, since petitioner has abandoned his contention, made in the district court, that the transportation comes within the statutory exemption. Petitioner's argument that the district court improperly construed the phrase "agricultural products" in his certificate to mean "agricultural commodities (not including manufactured products thereof)" as used in Section 203(b)(6) presents no question as to the proper construction of that Section. It merely raises the issue whether the language in the certificate was intended by the Commission to have the same meaning as the different language used by Congress in the statute.[2] Obviously, the interpretation of a single certificate of convenience and necessity does not present a question of sufficient general importance to justify review by this Court.

2. Petitioner seeks review of an interpretation by the Commission of its own certificate, which interpretation has been sustained by the two courts

[2] The legislative history cited in support of petitioner's contention—purportedly demonstrating that the words "agricultural commodities (not including manufactured products thereof)" were used by Congress in a narrower sense than the phrase "agricultural products" which appeared in an earlier draft of the bill—is irrelevant to the meaning of "agricultural products" as used in petitioner's certificate.

below. We submit that the term "agricultural products" in the certificate plainly connotes products of the farm. Petitioner would have the Court hold, in effect, that "products of the farm" includes "commodities manufactured from products of the farm." There is no basis for such an expansion of the term, and the courts below correctly held that by this language the Commission clearly meant to authorize no more than the transportation of unmanufactured products of the farm. Since the Commission consistently has held that shelled peanuts are a manufactured product, *Monark Egg Corporation Contract Carrier Application,* 44 M.C.C. 15; *Determination of Exempted Agricultural Commodities,* 52 M.C.C. 511, 537 (April 13, 1951), transportation of this product was not authorized by petitioner's certificate.[3]

3. Petitioner's contention that the action of the lower courts in construing his certificate to mean "agricultural commodities (not including manufactured products thereof)" constitutes a partial revocation of his certificate without complying with the applicable provisions of Section 212(a) of the Interstate Commerce Act appears frivolous. The

[3] The decisions of the Commission cited by petitioner are not in conflict. *Tidewater Transfer Co., Inc.—Extension—Wines in Bulk,* 47 M.C.C. 496, dealt with the method of transporting a commodity whose transportation already was authorized; the Commission held that a certificate covering wine sanctioned the transportation of wine in tank vehicles. *Coastal Tank Lines, Inc.* v. *Charlton Bros. Transportation Co.,* 48 M.C.C. 289, concerned a certificate to transport "general commodities," obviously a far different type of authority from the restricted "agricultural products" here involved.

court, in construing the certificate, is not depriving petitioner of any rights, but merely is determining what those rights are.[4] The cases cited by petitioner in support of this contention are not apposite since they involve the power of the Commission to modify an existing certificate in administrative proceedings rather than the power of courts to construe one.[5]

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[4] The same contention of partial revocation of a motor carrier certificate by judicial construction was unsuccessfully urged upon this Court in *Black* v. *Interstate Commerce Commission*, 167 F. 2d 825 (C.A. 5), certiorari denied, 335 U.S. 818 (see No. 120, Oct. Term 1948, Br. in support of pet. for certiorari, 18-19).

[5] Moreover, in two of these cases, *United States* v. *Rock Island Motor Transit Co.*, 340 U.S. 419, and *United States* v. *Texas & Pacific Motor Transport Co.*, 340 U.S. 450, the action of the Commission which allegedly modified the certificate was sustained, while *United States* v. *Seatrain Lines*, 329 U.S. 424, merely held that the Commission's power to revoke a certificate did not extend to carriers by water.

CONCLUSION

As the decision below is correct, is not of general significance and there is no conflict of decisions, it is respectfully submitted that the petition for a writ of certiorari should be denied.

PHILIP B. PERLMAN,
Solicitor General.
H. G. MORISON,
Assistant Attorney General.
DANIEL M. FRIEDMAN,
Special Assistant to the Attorney General.

JAMES A. MURRAY,
LEO H. POU,
Attorneys, Interstate Commerce Commission

SEPTEMBER 1951.

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APPENDIX

The pertinent provisions of Part II of the Interstate Commerce Act, 49 Stat. 543, as amended, 49 U.S.C. 301 *et seq.*, are as follows:

> Sec. 203(b). Nothing in this part, except the provisions of section 204 relative to qualifications and maximum hours of service of employees and safety of operation or standards of equipment shall be construed to include * * * (6) motor vehicles used in carrying property consisting of * * * agricultural commodities (not including manufactured products thereof) * * *. [49 U.S.C. 303(b).]
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> * * * * *
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> Sec. 206(a)(1). Except as otherwise provided in this section and in section 210a, no common carrier by motor vehicle subject to the provisions of this part shall engage in any interstate or foreign operation on any public highway, or within any reservation under the exclusive jurisdiction of the United States, unless there is in force with respect to such carrier a certificate of public convenience and necessity issued by the Commission authorizing such operations: * * *. [49 U.S.C. 306(a)(1).]
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> * * * * *

Sec. 208(a). Any certificate issued under section 206 or 207 shall specify the service to be rendered and the routes over which, the fixed termini, if any, between which, and the intermediate and off-route points, if any, at which, and in case of operations not over specified routes or between fixed termini, the territory within which, the motor carrier is authorized to operate * * *. [49 U.S.C. 308(a).]

* * * * *

Sec. 212(a). Certificates, permits, and licenses shall be effective from the date specified therein, and shall remain in effect until suspended or terminated as herein provided. Any such certificate, permit, or license may, upon application of the holder thereof, in the discretion of the Commission, be amended or revoked, in whole or in part, or may upon complaint, or on the Commission's own initiative, after notice and hearing, be suspended, changed, or revoked, in whole or in part, for willful failure to comply with any provision of this part, or with any lawful order, rule, or regulation of the Commission promulgated thereunder, or with any term, condition, or limitation of such certificate, permit, or license: *Provided, however,* That no such certificate, permit, or license shall be revoked (except upon application of the holder) unless the holder thereof willfully fails to comply, within a reasonable time, not less than thirty days, to be fixed by the Commission, with a lawful order of the Commission, made as provided in section 204(c), commanding

obedience to the provision of this part, or to the rule or regulation of the Commission thereunder, or to the term, condition, or limitation of such certificate, permit, or license, found by the Commission to have been violated by such holder: *And provided further,* That the right to engage in transportation in interstate or foreign commerce by virtue of any certificate, permit, license, or any application filed pursuant to the provisions of sections 206, 209, or 211 of this title, or by virtue of the second proviso of section 206(a) or temporary authority under section 210a, may be suspended by the Commission, upon reasonable notice of not less than fifteen days to the carrier or broker, but without hearing or other proceedings, for failure to comply, and until compliance, with the provisions of sections 211(c), 217(a), or 218(a) or with any lawful order, rule, or regulation of the Commission promulgated thereunder. [49 U.S.C. 312(a).]

* * * * *

Sec. 222(b). If any motor carrier or broker operates in violation of any provision of this part (except as to the reasonableness of rates, fares, or charges and the discriminatory character thereof), or any rule, regulation, requirement, or order thereunder, or of any term or condition of any certificate or permit, the Commission or its duly authorized agent may apply to the district court of the United States for any district where such motor carrier or broker operates, for the enforcement of such

provision of this part, or of such rule, regulation, requirement, order, term, or condition; and such court shall have jurisdiction to enforce obedience thereto by a writ of injunction or by other process, mandatory or otherwise, restraining such carrier or broker, his or its officers, agents, employees, and representatives from further violation of such provision of this part or of such rule, regulation, requirement, order, term, or condition and enjoining upon it or them obedience thereto. [49 U.S.C. 327(b).]

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